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TASKFORCE ON THE CHURCHES AND CORPORATE RESPONSIBILITY

HUMAN RIGHTS AND INTERNATIONAL FINANCIAL INSTITUTIONS

A Brief

Submitted to the Sub-Committee on Human Rights

of

The House of Commons

MAY 8, 1990

92-02837/

HUMAN RIGHTS AND INTERNATIONAL FINANCIAL INSTITUTIONS

I Introduction

The Taskforce on the Churches and Corporate Responsibility is an ecumenical coalition of the main Christian churches in Canada. Since its establishment in 1975, much of our work has focussed on Canadian corporate and banking activity in countries whose regimes violate internationally recognized human rights of their citizens. Over the years, members of the Taskforce have as shareholders in corporations and banks, sought the cooperation of management to make investment in or loans to human rights violator countries conditional upon the restoration of basic human rights.

By extension, the Taskforce has from time to time addressed the Canadian government. We have submitted briefs and legislative proposals to various parliamentary committees in areas where in our view the Government of Canada should more effectively protect international human rights. Our efforts to persuade the Government of Canada, as a member of the international financial institutions (IFIs), to increase the scope of Canada's human rights policy, illustrates this point.

II Disagreement with Canada's Scope of Human Rights Promotion

We have welcomed the repeated reassurances of successive government ministers that the protection and promotion of internationally recognized human rights is one of Canada's main foreign policy principles. We have commended various Canadian votes cast in favour of United Nations resolutions condemning states which persist in gross and systematic human rights violations. We support Canada's contributions to and active participation in the international financial institutions such as the IMF, the World Bank, and a variety of regional development banks.

Our main disagreement with the Canadian government on this issue has focussed on Canada's failure to apply its commitment to human rights in all of the international institutions in which it is a member. With regard to the IMF, the World Bank and the regional development banks we have long advocated that Canada should make respect for human rights a co-determinant -along with economic and technical criteria - in its voting decisions for credit applicants.

Definition of "basic human rights": In searching for a definition of "basic human rights", we have selected those narrowly defined rights without which life would be extinguished or rendered unbearable. They appear in identical form in "the Universal Declaration of Human Rights" and in "the International Covenant on Civil and Political Rights".

They constitute the right to be free of:

- arbitrary arrest, detention and execution;
- torture and/or cruel inhumane and degrading treatment;
- internal or external exile.

These basic and minimum rights are almost universally accepted. Observance of these should therefore form the minimum criteria for an assessment of a government's adherence to basic human rights standards. IFI credit and loan applications from governments which do not comply with such minimum standards should be excluded until they have restored those rights.

III Canadian and International Efforts to make IFIs responsive to Human Rights

Canadian Private Members' Bill: The Hon. David Macdonald when a member of the Opposition, must be credited with the first ever international human rights proposal to Canada's parliament. His private member's bill of March 1977, re-introduced in March 1978, was defeated. Had the Bill become law, it would have prohibited foreign aid and tariff concessions to any gross violator of human rights. It would also have withheld Export Development Corporation credits from regimes which persisted in systematic human rights violations.

USA Initiatives: Simultaneously in the USA, Congress passed a series of amendments to the foreign aid legislation which were designed to put pressure on violators of internationally recognized human rights. The amendments included Section 701 of the International Financial Institutions Act. The new section prohibited aid to countries with a pattern of gross and consistent violations of internationally recognized human rights - unless the aid satisfied basic needs. American executive directors at the World Bank and regional development banks are therefore, obliged to advance by voice and vote the cause of human rights and are authorized to oppose any loan or other forms of assistance to regimes which engage in gross and systematic violations of human rights. These legislative initiatives, including their extension to international financial institutions must rank with the most important testimony to what can be achieved in this area.

Also, in 1983, the US Congress imposed very severe restrictions on any US support for IMF credits to South Africa as long as apartheid persists.

Further Canadian Initiatives: A decade after David MacDonald's attempts to move the Canadian parliament in a similar direction, the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations rekindled these concerns. In its report of June 1986, Independence and Internationalism, the Joint Committee (p.103) concluded:

> *... We recognize that the most extreme violations of human rights destroy the possibility of economic and social development. Accordingly we recommend that Canada use its voice and vote at meetings of international financial institutions to protest systematic, gross and continuous violations of human rights.*

A year later, the House of Commons Standing Committee on External Affairs and International Trade reaffirmed this recommendation. It asked that:

Canada work for changes to allow human rights concerns to be put openly on the agenda of the international financial institutions and, in addition, examine very critically multilateral loans to countries deemed "human rights negative" or "human rights watch".
(Terms which denote the two most serious categories of human rights offenders.)

IV Position of the Government of Canada

Both the Trudeau and the Mulroney governments had opposed the consideration of human rights in the operations of the IFIs. This position has not been inadvertent or accidental; it has been deliberately adopted and persuasively advocated. They have held that human rights are political matters which should have no place in institutions exclusively concerned with economic and technical criteria.

As a result, it has happened that Canada's permanent representative to the United Nations voted in favour of resolutions condemning the systematic and gross violations of human rights of a particular regime in New York, while in Washington, Canada's executive director in the World Bank, in the IMF or in the Inter-American Development Bank has voted in favour of a major financial aid package for the very same human rights violator regime.

It is this anomaly - that the UN vote has no adverse economic consequences for the offensive regime and brings no relief for its victims - which human rights organizations and successive parliamentary committees have sought to correct. By endowing international financial institutions with the authority to withhold financial aid until gross and continuous violations of internationally recognized human rights have ceased, a powerful incentive would be added for the restoration of minimum rights by recalcitrant regimes.

V Politicization of International Financial Institutions

Why then have successive Canadian governments resisted this powerful instrument? Marc Lalonde, Minister of Finance in 1984 made the most persuasive case. He felt that attempts to bring human rights criteria to bear on IFI decisions were ill-concealed political moves disguised as human rights concerns. Writing about the experience at the Inter-American Development Bank (IDB), he said:

During the term of President Carter, the IDB was placed under considerable pressure to reduce programs to Chile and Haiti in response to human rights considerations. Currently, for <u>quite different reasons</u>, (underlining added) the USA Administration is seeking to restrict loans to Nicaragua and Guyana. We and other member countries have resisted these efforts by the USA to make the IDB an instrument of bilateral policy... The original motivation for bringing the outside factors into play may have been very laudable, but the end result may be the destruction or weakening of a valuable institution.

Lalonde thus distinguished between human rights considerations and straight forward political pressure serving US interests. However, these distinctions became blurred and more recent correspondence with cabinet ministers no longer expresses frustration with American political pressure, but reject human rights considerations in the IFIs as ipso facto political, and therefore a threat to the institutions.

The two parliamentary committees have unanimously recommended that the Government of Canada include human rights criteria by voice and vote in its loan and credit decisions in the IFIs, and that it should work for changes in the IFIs to allow human rights concerns to be openly on the agenda of these institutions. In other words they have recommended a new rule which would make basic human rights criteria - as a matter of principle - a co-determinant in addition to technical and economic criteria for loan and credit approvals.

The Government has evaded the substance of these important recommendations. The 1987 government's response, To Benefit a Better World, promised no change. It claimed that Canada endeavors to give human rights due consideration in the IFIs. (p.28) Subsequent correspondence with the Minister of Finance and the Secretary of State for External Affairs make clearer still their preference for human rights considerations at the discretion of the government and on the rare occasion when it wishes to exercise that option. Letters from both ministers in December 1987 again warned of politicization of the IFIs and counselled the exclusion of any non-economic criteria from decision-making. At the extreme, they said, Canada would support curtailment of lending, where human rights violations made development impossible. This is not a significant concession as in such cases economic and technical considerations would surely come to the selfsame conclusions.

Human rights criteria should be clearly distinguished from "economic", "technical" and from "political" criteria. Politicization is bound to be a fact of life in these large international financial institutions and should be acknowledged and dealt with as such. It should not be portrayed as an impending menace held at bay by the exclusion of human rights criteria. The IFIs are among the most powerful international instruments; observance of basic human rights should be a co-determinant in decisions on credit and loan applications through a process in which human rights criteria are consistently applied.

Taskforce on the Churches and Corporate Responsibility

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May 22, 1990

M. Maurice Tremblay
Chairman
Sub-Committee on International Human Rights
House of Commons
Ottawa, ON
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Dear M. Tremblay:

May I say again that it has been an honour to appear before the Sub-Committee on International Human Rights. I was pleased with the seriousness with which you approached the subject and enjoyed the ensuing discourse.

We are responding to your kind offer to receive further communication on the subject of "Human Rights and International Financial Institutions." Please find below a few additional points which arise largely out of a closer reading of Dr. Culpeper's presentation to the Sub-Committee:

1. Politicization of the IFIs.

   There were several issues under this heading discussed by both Dr. Culpeper and myself where it seemed to me that we diverged on the meaning of "politicization".

   In our view politicization in the IFIs occurs when executive directors approve or deny credits depending on the compatibility with their own governments of the applicant's ideology and/or system of government. These decisions disregard or deliberately distort IFI staff recommendations about technical or economic merits of a project. US executive directors during the Reagan administration frequently resorted to the kind of "behind the scenes" pressures which Dr. Culpeper described. We are largely in agreement with him in this interpretation of the term "politicization".

   We are all the more surprised that we must voice our disagreement with Dr. Culpeper's own politically highly charged proposal. On p.9, paragraph 4, he explains the World Bank's new concept of an "enabling environment":

   > ...The concept refers to an economic climate in which private initiative can flourish, or at least not be severely constrained by the state. It is difficult to conceive of such

> an enabling environment without two sets of basic human rights: freedom against arbitrary arrest or detention, and the right to private property. Unless individuals and private property are protected against unlawful seizure by the state, how can market capitalism, so emphasized by prevailing doctrines of economic development, ever take root or function efficiently.

Dr. Culpeper here declares the right to private property to be a basic human right and he assumes that this must be so because without the right to private property, market capitalism can not take root nor function efficiently.

Although the right to property appears in Article 17 of The Universal Declaration of Human Rights it does not appear in the International Covenants on Human Rights. Theodor van Boven, when Director of the United Nations Human Rights Division, explained how human rights concepts have evolved over time:

> The right to property is a case in point. ... there has more recently been a strong and growing tendency to make it subject to the requirements of the general welfare of society. Differences of opinion regarding the concept and the nature of the right to property even resulted in its omission from the International Covenants of Human Rights...
> (Karel Vasak, The International Dimensions of Human Rights, Vol.1, [Paris UNESCO, 1982] p.43)

Given this situation, the right to private property should not be cited as if it was an internationally recognized human right, let alone a basic human right. Dr. Culpeper therefore submits a personal proposal when he asks that the "right to private property" be elevated to that of an internationally recognized basic human right. By joining the right to private property to that of the basic right to security of person and by calling them both basic human rights - the absolute minimum required to make life tolerable - universally accepted basic human rights standards have been devalued. At the same time the proposal to introduce as voting criteria in the IFIs principles of market capitalism follows the tradition of those who use the IFIs as instruments for the promotion of a particular world view and economic systems and engage in ideological manipulation. We reject this position.

This response and the reasons for it have been discussed this week during meetings of the member denominations of the Taskforce. They have asked me to convey to you their theological reflections on this point:

> Dr. Culpeper's exaltation of the right to private property as a basic human right, apparently absolute or quasi-absolute and yielding to no imperative of the common good, runs counter to the tradition of Judeo-Christian

> philosophers and theologians of natural law of the western world whose thoughts represent the very matrix of human rights. For them the system of private property was but a means, often the best, of assuring an effective division of material goods, a system which, however, had to yield to redistribution whenever wealth in any form was monopolized or concentrated to the detriment of the common good.

Finally, we wish to note that even on its own terms, Dr. Culpeper's position cannot be defended. The question is posed how market capitalism can function efficiently if individuals and private property are subject to seizure by the state. In our experience the seizure of individuals - involving arbitrary arrests, disappearances, maltreatment and extra-judicial executions - in countries such as Chile under Pinochet, the Philippines under Marcos, South Africa to the present day, has not in the least prevented market capitalism from flourishing. A case could even be made that the seizure of dissidents, especially those who advocate a more egalitarian system, makes the functioning of market capitalism more rather than less efficient.

2. Effect on the Offending States of Human Rights Votes in the IFIs

Dr. Culpeper is no doubt correct when he states (p.2, paragraph 4) that the "conscientious objector" votes, which express disapproval but are not meant to stop a loan, have had little or no effect on the offending regimes seeking the loan. They have correctly assessed the situation and concluded that there would be no reason to improve human rights conditions because of such harmless ritual. But this example does not prove that the results would be as ineffective, if the IFIs were to consistently apply agreed upon basic human rights criteria with predictable adverse consequences for the recalcitrant offender.

Indeed, one can perhaps be encouraged by the effect of the 1985 cut-off by the majority of international commercial banks of new lending to South Africa. This single act of withholding a financial "vote of confidence" from the apartheid state has likely done more to encourage fundamental change in South Africa than any other international action.

3. The Role of the Government of Canada in Decision-making of the IFIs

We have no quarrel with Dr. Culpeper's preference that "it would be much better for the IFIs to <u>internalize</u> (emphasis in original text) the criteria for human rights standards on a basis acceptable to all or most members." But the concluding sentence puzzles us. " 'Human rights conditionality'", he writes, "would depend on multilaterally agreed standards, not on the vagaries of voting behaviour at the Executive Board." (p.2-3, paragraph 6)

> It seems to us that as shareholders in the IFIs, the Governors who represent the states which are members of these institutions are responsible for setting policy for the IFIs. The executive directors, appointed as they are by the member states, are accountable for their voting activity to these states. We do not understand how the IFIs can "internalize" the process of applying human rights criteria, without approval from the policy making structures of the institutions and without the voting by executive directors within a framework of official policy. Whatever changes are necessary for the introduction of human rights criteria as a co-determinant in credit approvals, must surely require a decision of the Canadian Government among others.

We thank you for allowing us to make these further comments and hope that they will contribute to your ongoing reflections on the task you have set yourselves. May I ask that this letter be distributed to all the members of the Sub-Committee.

Yours sincerely,

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Consultant

copy: Dr. Roy Culpeper
Mr. Allan McChesney